

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

Re: Docket Nos. 18, 197

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO MOTION OF DEBTORS FOR ENTRY OF
ORDERS (I) (A) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS'
ASSETS, (B) APPROVING THE STALKING HORSE BID PROTECTIONS, (C)
SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS'
ASSETS, (D) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION,
AND SALE HEARING, AND (E) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES, (II) (A) APPROVING SALE OF DEBTORS' ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND (B) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (the “Debtors”), by and through its undersigned proposed counsel, hereby files this limited objection (the “Objection”) to the *Motion of Debtors for Entry of Orders (I) (A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Approving the Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Debtors' Assets, (D) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing,*

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors' corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

and (E) Approving Assumption and Assignment Procedures, (II) (A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief [Docket No. 18] (the "Bidding Procedures Motion").²

LIMITED OBJECTION

1. The Committee does not object to the Debtors' designation of the bid submitted by Gateway BL Acquisition, LLC, an affiliate of Nexus Capital Management LP (the "Stalking Horse Bidder" or "Nexus"), as the Stalking Horse Bid in principle, nor does it object to granting Nexus customary bid protections³ in connection therewith. The Committee understands that the Stalking Horse Bid contemplates the continuation of a significant portion of the Debtors' business, including preserving thousands of jobs. As such, the Committee would support a sale to Nexus subject, of course, to higher and better offers at an auction.

2. However, as currently structured, the Stalking Horse APA contemplates only a nominal cash payment to the estates. The approximate \$760 million purchase price is comprised of: (i) \$2.5 million in cash (the "Cash Purchase Price"); (ii) the payoff of the aggregate existing secured debt in the amount of approximately \$757.5 million (the "Debt Payoff Amount"); and (iii) the assumption of "certain liabilities" in an amount that will depend, in part, upon the number of leases Nexus ultimately assumes in connection with the sale.⁴ The Stalking Horse APA requires

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Motion.

³ The Bid Protections consist of (i) a Break-Up Fee in an amount equal to \$7.5 million and (ii) an Expense Reimbursement of the out-of-pocket expenses actually incurred by the Stalking Horse Bidder, up to a maximum of \$1.5 million. *See* Stalking Horse APA §§ 1.01, 13.07. The Committee does not object to the Bid Protections subject to requested modifications outlined herein.

⁴ *See* Stalking Horse APA § 3.01.

Nexus to obtain fully executed Debt Commitment Letters (*i.e.*, proof of financing) prior to the hearing on the Bidding Procedures Motion solely as a condition to closing the sale.⁵ The Committee understands that, as of the date hereof, Nexus remains engaged in financing discussions with the Debtors' existing secured lenders, but has not yet obtained committed financing from them or any alternative financing source.

3. The Committee remains optimistic that Nexus will ultimately secure the requisite funding or otherwise reach agreement with the secured lenders regarding the roll of some or all of the Debtors' existing secured debt. However, in the event Nexus is ultimately deemed the Successful Bidder for the Debtors' assets but cannot close due to lack of such financing, it should not be entitled to payment of the \$1.5 million Expense Reimbursement and the return of its \$2.5 million cash deposit.⁶ The purpose of a stalking horse bid is to establish a baseline bid and set the floor for other bidders to bid against. As such, a stalking horse bid must be committed with some assurances to the estates. As currently contemplated, the Stalking Horse APA would permit the Stalking Horse Bidder to simply walk away with no pecuniary loss at any time prior to closing if it cannot secure the necessary financing upon which the bulk of its bid is premised.

4. Accordingly, this Court should only approve the Stalking Horse Bid if it is modified to provide that, in the event Nexus is deemed the Successful Bid, it shall forfeit its Expense Reimbursement and the Deposit Amount if the sale cannot close due to the Stalking Horse Bidder's failure to obtain financing necessary to satisfy the Debt Payoff Amount.

⁵ See Stalking Horse APA § 9.05.

⁶ The APA currently entitles the Stalking Horse Bidder to payment of the Expense Reimbursement and return of the Deposit Amount even if the failure to close is caused by its inability to obtain the requisite financing. See Stalking Horse APA §§ 3.02(b), 13.07(b)(ii)(B).

Dated: October 14, 2024
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Justin R. Alberto

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*Proposed Counsel to the Official Committee of
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